

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11**

MAGELLAN HEALTHCARE, INC.
Employer

and

Case 10–RC–245252

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
LOCAL LODGE 47**
Petitioner

DECISION AND DIRECTION OF ELECTION

A hearing officer of the Board held a hearing in this matter on July 31, 2019.¹ The only matter presented at hearing was whether to conduct the election by manual ballot or by mixed manual-mail ballot. The Petitioner argued for a mixed manual-mail ballot, while the Employer argued for a manual ballot or, in the alternative, a mixed manual-mail ballot. Although election arrangements, including the voting method, are not litigable issues, the hearing officer solicited the parties' preferences on the voting method. The parties did not file post-hearing briefs.

Having considered the parties' positions, I am directing a mixed manual-mail ballot election. To give context for my discussion of this matter, I provide a brief overview of the Employer's operations, jurisdictional information, and the petition. I will then summarize the parties' positions. Lastly, I will analyze the facts using the Board's guidelines for the appropriate use of mail-balloting, as articulated in *San Diego Gas & Electric*, 325 NLRB 1143 (1998), explaining why the circumstances of this case favor a mixed manual-mail ballot.

I. FACTS

The Employer, Magellan Healthcare, Inc., a Delaware corporation with an office and place of business in Scottsdale, Arizona, provides counseling services to the federal government, in connection with the Military and Family Life Counseling Program (MFLC Program), to military members and their families based at Fort Bragg, North Carolina. The parties stipulated that, during the preceding calendar year, the Employer, in the course of conducting its operations as described here, has provided services to the United States federal government valued in excess of \$250,000, and has purchased and received goods valued in excess of \$5,000 directly from points outside the state of Arizona.

Petitioner, Machinists Lodge 47, seeks to represent a unit of Military Family Life Counselors (MFLCs) working for the Employer's MFLC Program based out of Fort Bragg, North Carolina, excluding all other employees, office clerical employees, managers, guards, and

¹ All dates are for the year 2019 unless otherwise noted.

supervisors as defined by the Act. There are approximately 56 employees in the petitioned-for unit. The parties stipulated that Petitioner is a labor organization within the meaning of the Act and that the petitioned-for unit is an appropriate unit. The parties have also stipulated that there is no contract bar or other bar in existence that would preclude the processing of this petition.

II. THE PARTIES' POSITIONS

A. The Petitioner's Position

The Petitioner requests a mixed manual-mail ballot election. In support of its position, the Petitioner asserts that 31 of the 56 eligible voters work at schools at off-base locations. For those 31 voters, the Petitioner asserts that their work locations are scattered across a "251-square-mile radius around Fort Bragg," and that these voters should vote by mail ballot. For the remaining 25 voters located on-base at Fort Bragg at various work locations, the Petitioner contends that they should vote manually.

For the mail balloting, the Petitioner requests that the Region issue mail ballots to voters prior to the manual balloting. The Petitioner estimates that voters would need about three weeks, but no less than a one and a half weeks, to return their ballots.

For the manual balloting, the Petitioner requests an election on the soonest day practicable, with two voting sessions, the first from noon to 1:30 p.m. and the second from 4 p.m. to 6 p.m., both at an off-base location within close proximity to Fort Bragg.² The Petitioner prefers a single polling location. The Petitioner is willing to waive any part, or the entirety, of the 10-day period with the voting list prior to an election.

B. The Employer's Position

The Employer requests a manual ballot election. In support of its position, the Employer offered into evidence, and the hearing officer accepted, a list of each of the 56 voters' work locations, with the Employer's estimate of each off-base work location's distance to Fort Bragg's main entrance.³ The Employer asserts that 25 of the eligible voters work on-base at Fort Bragg,

² At hearing, the parties agreed that the election could not take place on the military base at Fort Bragg.

³ The Petitioner objects to the admission of the Employer's list, in part, because the list includes distance estimates only from off-base locations to the main gate, and does not include on-base distances.

Although the Hearing Officer did not explicitly rule on the Petitioner's objection, I find that the Hearing Officer's acceptance of the Employer's list into the record was proper inasmuch as the list provides an accurate description of each off-base MFLC's work location, which the Employer testified to at hearing. I have not relied on the Employer's distance estimates in this decision; instead, I have estimated the distances between the off-base MFLC's work locations and the main entrance to Fort Bragg using Google Maps (<https://www.google.com/maps>). See *Bud*

and all but 5 of the remaining 31 eligible voters work at schools located within 25 miles of Fort Bragg.⁴ Based on these observations, the Employer argues that over 90 percent of the voters work on or within 25 miles of Fort Bragg, and that these voters would be able to vote during the two proposed voting sessions. Additionally, the Employer generally claims that a manual-ballot election would prevent voter disenfranchisement.

The Employer favors a manual-ballot election for August 21 or August 26, requesting the same arrangements that the Petitioner requests for manual balloting: two voting sessions, one from noon to 1:30 p.m. and another from 4 p.m. to 6 p.m., both at the same off-base location. The Employer also asserts that it would not oppose multiple polling sites should such an arrangement be appropriate for this election.

In the alternative, the Employer requests a mixed manual-mail ballot election. For the manual balloting, the Employer favors the same arrangements it proposes for an entirely manual-ballot election for the 25 voters whose work locations are on-base at Fort Bragg. For the mail balloting, the Employer prefers that all voters whose work locations are off-base receive mail ballots. The Employer asserts that the Region should issue mail ballots to voters on the same day as the manual balloting.

III. DISCUSSION

After careful consideration of the Petitioner's and the Employer's positions, I conclude that a mixed manual-mail ballot is appropriate for the election in this matter. In so concluding, I rely on the Board's guidelines for the use of mail ballots from *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998). In that case, the Board stated

[T]he Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are "scattered" because of their job duties over a wide geographic area; (2) where eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

I find that, in the present case, a significant portion of the voting unit is scattered under the first and second factors of *San Diego Gas & Electric*.

Antle, Inc., 361 NLRB 873 (2014), incorporating by reference *Bud Antle, Inc.*, 359 NLRB 1257 (2013), and specifically footnote 3 of 359 NLRB at 1257, where the Board takes administrative notice of approximate distances based on Google Maps.

⁴ Contrary to the Employer's assertion at hearing, a review of the Employer's list shows that 4, rather than 5, of the remaining 31 voters have work locations more than 25 miles away from Fort Bragg.

The first factor considers whether voters are scattered due to job duties located over a wide geographic area. Here, at least 31 voters have work locations that are not located on Fort Bragg. All 31 voters have separate work locations, ranging from approximately 9 miles to 32 miles away, geodetically, or as the crow flies, from Fort Bragg's main gate.⁵ Aside from the five voters working at schools on-base at Fort Bragg,⁶ the record is unclear as to whether the remaining on-base voters work in a wide geographic area. Given these facts, I conclude that at least significant portion of the voting unit has job duties located over a wide geographic area.

The second factor considers whether voters will be "scattered" such that they will not be present at a common location at a common time. During the week of August 19, when the voters will be returning to work for orientation, each voter will be working at his or her respective work location. The record establishes that none of the 31 voters with off-base work locations share a common location. Aside from the five voters working at schools on-base at Fort Bragg, each of whom works at a different location, the record does not clearly reflect whether the remaining on-base voters are scattered under this second factor. Based on these considerations, I conclude that at least a significant portion of the eligible voters are scattered.

Having concluded that the 31 off-base voters are scattered under the first and second factors of *San Diego Gas & Electric*, I find that a mail-ballot is appropriate for the off-base voters. Turning to the parties' differing positions as to when the Region should mail the ballots to the off-base voters, NLRB Casehandling Manual (Part Two), Representation Proceedings Section 11335.4 states as follows:

One critical issue in a mixed manual/mail election is when to send out the mail ballots. Mail ballots can be mailed out early enough so that they will be returned by the date of the manual election which would allow all the ballots to be comingled and counted immediately after the manual election. However, parties may object to this sequence as they may be restricted in their ability to campaign under the Peerless Plywood rule once the mail ballots are issued. See *Guardsmark, LLC*, 363 NLRB No. 103 (2016); *Shop Rite Foods, Inc.*, 195 NLRB 133 (1972). Further, allowing some employees to receive their ballots before the manual election can lead to complications such as employees bringing their ballot to the manual voting site which could result in suspicions of "chain voting." Accordingly, the preferred

⁵ The work location that is approximately 9 miles from the main gate is Overhills High School. The work location that is approximately 32 miles away from the main gate is West Pine Elementary and Middle Schools.

⁶ The five on-base work locations, and each location's distance from the main gate of Fort Bragg, are as follows: Albritton Middle School, two miles; Bowley Elementary School, two miles; Devers Elementary School, three miles; Irwin Intermediate School, two miles; and Hampton Primary School, two miles.

method is to mail out the ballots on the day of the manual election, and to impound the manual ballots pending the return of the mail ballots.

Given the above, I will direct the mailing of ballots to off-base voters to occur on the same day as the manual balloting.

Turning to the manual balloting, the parties agree that the voters whose work locations are on-base at Fort Bragg may appropriately vote by manual ballot. The parties likewise agree on voting times. Regarding the date of the election, the Petitioner favors the earliest practicable date, whereas the Employer favors either August 21 or August 26. Here, because the majority of voters will have returned to work for August 19, I am directing the manual balloting to occur on August 22. This will provide, for the period of August 19 through August 21, three full working days during which voters will have the notice of election. In addition to posting the notices, the Employer must e-mail the notices to all voters, as the record reflects that the Employer communicates with its employees by e-mail.

IV. CONCLUSION

Based upon the entire record in this matter, and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Military Family Life Counselors working for the Employer's MFLC Program based at Fort Bragg, North Carolina, excluding all other employees, office clerical employees, managers, guards, and supervisors as defined by the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Association of Machinists and Aerospace Workers, Local Lodge 47.

A. Election Details

Based on my determination that a **mixed manual-mail ballot** is the most appropriate voting method for the election in this matter, I shall direct an election as follows:

1. Manual Balloting

Employees whose work locations are on-base at Fort Bragg will vote manually. The manual balloting will occur on **Thursday, August 22, 2019**, during two voting sessions: the first from 12 noon to 1:30 p.m., and the second from 4 p.m. to 6 p.m. The balloting will take place at an off-site location to be determined by the Regional Director for Region 10 as close as practicable to Fort Bragg. The manual ballots will be impounded.

2. Mail Balloting

Employees whose work locations are off-base at Fort Bragg will vote by mail. The Region will mail ballots to those employees on Thursday, August 22, 2019, from the Region 10 office of the National Labor Relations Board located at Harris Tower, 233 Peachtree Street N.E., Suite 1000, Atlanta, Georgia, 30303-1531.

After receiving their ballots, voters who wish to vote must appropriately mark their ballots and return them in the provided return envelopes. Voters must sign the outside of the envelope in which they return their ballots. Any ballot received in an unsigned envelope will automatically be void.

Employees who believe that they are eligible to vote and who do not receive a ballot in the mail by 4:30 p.m. on August 29, 2019, should communicate immediately with Field Attorney Sarah Schafhauser by e-mail at Sarah.Schafhauser@nlrb.gov or by telephone at (336) 582-7129, so that a replacement ballot can timely be mailed.

All ballots will be comingled and counted on September 9, 2019, at 3 p.m., at the Region 10 Subregional office of the National Labor Relations located at Republic Square, 4035 University Parkway, Suite 200, Winston-Salem, North Carolina, 27106-3325.

B. Voting Eligibility

Eligible voters are those in the unit who were employed during the payroll period ending **July 20, 2019**,⁷ including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well

⁷ The parties agreed on this date at hearing.

as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. The Employer must provide the Region with two separate lists. One list should contain the above information for all employees whose work locations are on-base at Fort Bragg and are eligible to vote manually and another list for the remaining employees who will be voting by mail ballot.

To be timely filed and served, the lists must be *received* by the regional director and the parties by **Monday, August 12, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with these requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible.

In addition, as discussed above, the Employer must also distribute the Notice of Election to employees by e-mail. If the Employer customarily communicates electronically by any other method with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election by those additional electronic methods.

The Employer must post copies of the Notice at least three full working days prior to 12:01 a.m. of the day of the election, and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

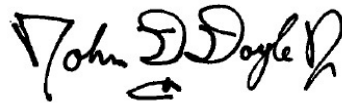
RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: August 8, 2019



John D. Doyle Jr., Regional Director
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